



Arkansas Insurance Department

Mike Huckabee, Governor

Mike Pickens, Commissioner

2003 ARKANSAS INSURANCE DEPARTMENT- SPONSORED LEGISLATION

ACT DESCRIPTION

179 MASTECTOMY: This new law is a technical change to our statutes to reflect current practice and to properly conform our law to the Women's Health and Cancer Rights Act of 1998. This Act inserts the federal requirements for mastectomy benefits into our state law to conform with federal law requirements, including among other things: reconstruction of the breast on which the mastectomy was performed; surgery and reconstruction of the other breast to produce a symmetrical appearance; prostheses and physical complications at all stages of mastectomy, including lymph edemas. (Insurers have already been complying with these federal requirements by including them in their policy forms and as the Department approves subject policy forms we have been, and will continue to, require such.)

1358 SMALL EMPLOYER HEALTH INSURANCE PURCHASING GROUP (HIPG): This Act modifies the Small Employer Purchasing Group Act, Ark. Code Ann. § 23-86-505. The proposed modification changes the requirement that each individual employee be required to reject in writing, any state mandated health benefit plan, done through a Health Insurance Purchasing Group. This signature requirement for each employee has been viewed by carriers as too much administration to justify offering these mandate-free products. Therefore, eliminating the signature requirement is an encouragement to companies to offer this less expensive insurance product. Under this 2003 Act, each employee/certificate holder of a group health benefit plan will receive a written notice about the mandated benefits that he or she are missing out on (assuming the employer/group policyholder has selected a less expensive health plan that lacks some or all of the mandated benefits). The amendment also calls for this notice to be in the form and manner as prescribed by rule or regulation promulgated by the Commissioner.

This Act also eliminates any requirement that the insurance coverage on a Health Insurance Purchasing Group be limited to 12 twelve months.

1359 HEALTH INSURANCE CONSUMER CHOICE: This Act modifies the 2001 Arkansas Health Insurance Consumer Choice Act, Ark. Code Ann. § 23-79-803. The proposed modification changes the requirement that each individual be required to reject in writing, any state mandated health benefit plan, done through individual and group health insurance plans and makes it clear that each employee/certificate holder of a group health benefit plan will receive a written notice about the mandated benefits that he or she are missing out on (assuming the group policyholder has selected a less expensive health plan that lacks some or all of the mandated benefits). The amendment also calls for this notice to be in the form and manner as determined by the Commissioner.

The Act also eliminates the yearly reporting requirement on the number of policies written in the State with or without State required mandates.

472 KEY AND NON-KEY MAN: This amendment to the insurable interest law primarily prevents employers from insuring employees without the employees' written consent.

859 EMPLOYEE PROTECTION WHEN EMPLOYER DOES NOT REMIT PREMIUM: This Act prohibits accident and health insurers from retroactively canceling a group health plan for non-payment of premium more than sixty (60) days from the date notice of cancellation is received by the insured.

1452 CONSUMER REPORTS: Act 1452 provides comprehensive requirements for insurers on how to file and what to disclosure to consumers in connection with the use of consumer credit reports and credit scores.

The Act's requirements affect only personal lines of insurance, including personal automobile and homeowners policies.

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Act 1452 provides many consumer safeguards. The most important are those requiring the insurance company or its agent to give the consumer information about whether they are using credit reports and the effect the consumer's credit report had on the final premium. Additional consumer protection provisions include:

1. Medical debts cannot be used
2. All inquires for automobile financing count as only one inquiry if made within 30 days
3. All inquires for home financing count as only one inquiry if made within 30 days
4. Uninitiated inquires, insurance inquiries and consumer inquires not to be counted
5. Must rerun credit at least once every 36 months
6. Consumers may have credit rerun once every 12 months
7. Dispute resolution requirements including correcting rates when errors are found in credit reports

Insurers are required to assist the consumer in finding out whether the credit report is accurate and those parts of the credit report that most affected the premium. If an insurer used a credit report from a credit bureau it must disclose which one it used if it takes an adverse action against a consumer based upon the credit report. It must also tell the consumer what factors played the most important part in determining any credit score derived from a credit report.

An adverse action is any unfavorable action taken by an insurance company against a consumer based on a consumer's credit report. The most common examples are charging more than the best premium and offering less coverage.

The law requires insurance companies to report to the Insurance Department annually how credit scoring affected consumer rates. That information will be reported by the Department to the Legislature each year.

Before using credit reports from a credit bureau, each insurer must provide to the Insurance Department a detailed filing supporting the finding that credit is related to future losses and that the use of credit complies with all other laws related to justification of premiums for personal insurance products.

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| 540 | INSURER INSOLVENCY CURE: This Act would amend the requirement that the Commissioner send a 60 day "cure" notice to impaired or insolvent domestic stock or mutual insurers. The current language arguably conflicts with the Arkansas Risk Based Capital (RBC) laws which have an insolvency cure mechanism triggering notice to the DOI and procedures to resolve the problem. The Act clarifies that the statute only applies to certain domestic stock and mutual insurers, which are <u>not</u> already subject to the diagnostic tools in the RBC laws. |
| 516 | MEWA: Unauthorized insurance products have been a large problem in this state over the past couple of years. Many Arkansas insurance consumers who thought they had purchased legitimate health insurance coverage were left with unpaid medical bills when unauthorized entities accepted premium monies, but did not pay claims. This Act gives the Arkansas Insurance Department more authority to shut down unauthorized health entities. Entities will be entitled to request a hearing on a cease and desist order within thirty (30) days. The commissioner may request an injunction or other action from the circuit court. This Act will also allow the Department to regulate ERISA arrangements to the fullest extent allowed by ERISA. Producers must know what they are selling before they sell it. Under this Act, anyone who knowingly sells an unauthorized insurance product shall be guilty of a felony and may be personally responsible for any damage caused. |
| 987 | PREPAID FUNERAL BENEFITS: This Act adds to law a provision that the purchaser must be given written notice in advance if the seller will procure a single pay whole life insurance policy or annuity to fund the contract price or prepaid funeral contract at an amount less than what the buyer paid the funeral home; allows bulk reparation applications, engrafts administrative procedures from insurance code, provides for emergency powers for license suspensions and trust disbursements; and restricts prepaid funeral reparation board member terms to two consecutive 4-year terms. |
| 1747 | UNFAIR TRADE PRACTICES ACT: This Act amends Arkansas's 1997 Insurance Sales Consumer Protection & Trade Practices Acts, in order to continue to conform them to the federal Gramm-Leach-Bliley Act (GLBA) and the new NAIC model Unfair Trade Practices Act (UTPA). |

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State laws in this area that are out of step with GLBA are preempted. Arkansas imposes consumer protection requirements on depository institutions that are involved in the sale of insurance products and GLBA specifies exactly how far states can go in this regard in 13 specific ways which have come to be known as “safe harbors”. The language tweaking current law in this Act comes from the amended model UTPA, which was specifically designed by banking and insurance regulators to assist states in taking its bank insurance sales laws to their consumer protection limits, but not beyond. The Act also adds to our Trade Practices law a section covering “Unfair Financial Planning Practices”.

1750	PEO’s (EMPLOYEE LEASING): This Act is a re-write of the existing statute (<u>Ark. Code Ann. §§ 23-92-401, et seq.</u>) to help the Insurance Department more effectively regulate Professional Employer Organizations ("Employee Leasing Firms" now known as PEOs).
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It has been 12 years since in 1991 Arkansas became the first state to require PEOs to be licensed. Since then over 20 states have followed Arkansas's lead. In those 12 years, state regulators and the PEO industry have learned a lot about how to regulate PEOs more effectively.

1762	MULTI-TRUST AGENCY TRUST FUND: This Act will reduce insurance costs and the effects of insurance market volatility on state agency budgets by establishing a trust fund to provide property, inland marine, boiler and machinery, and automobile liability and physical damage coverage for those state agencies participating in the program.
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1203	PRODUCER OMNIBUS ACT: The Gramm-Leach-Bliley Act of 1999 (GLBA) required a majority of states to either 1) enact uniform laws governing insurance producers authorized to sell, solicit, or negotiate insurance within the state or 2) enact reciprocity laws and regulations governing the licensure of non-residents. To preserve the authority of states to license insurance producers, last session Arkansas, along with a majority of other states, adopted the Producer Licensing Model Act (PLMA). In addition to creating a more uniform and efficient system of producer licensing, the PLMA created a system of reciprocity. This means for a non-resident producer applying in Arkansas the producer’s home state Department of Insurance will be relied upon for background checks and other due diligence steps. (The idea being that non-residents should not have to jump through a bunch of hoops they’ve already jumped through in their home state). We must grant licensure to non-resident producers if 1) the person is currently licensed as a resident and in good standing in his or her home state, 2) has submitted proper request/application and paid the necessary fees and 3) the person’s home state awards non-resident producer licenses to residents of this state upon the same basis.
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This Producer Omnibus Act promotes the insurance producer reciprocity requirements of GLBA by amending the remaining Arkansas statutes that discriminate against non-resident producers or otherwise defeat reciprocity.

In like manner, with respect to folks residing in Arkansas that wish to become insurance producers, we need to make doubly sure we only grant licensure to qualified applicants. As always, we do this for the protection of Arkansas insurance consumers and because now under the reciprocity arrangement all other states will be relying on the Arkansas Insurance Department’s due diligence as our Arkansas resident producers seek licensure in other states. Sections 2 and 10 of the Producer Omnibus have, therefore, been beefed up to make clear the Commissioner can require whatever documentation he needs to verify all qualifications for licensure have been met for resident producers.

1782	VIATICAL SETTLEMENT ACT: An Act To Repeal the Viatical Settlements Act in <u>Ark. Code Ann. § 23-81-501 et seq.</u> in order to replace it with the existing NAIC model act on viatical settlements, which is more favorable to senior citizens. The Act retains unique provisions we already have in our Code related to agent licensing and application filings. The Act also clarifies there is no insurable interest in the sale and exchange of a viatical contract, to avoid conflicting with our insurable interest statute.
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1784	PRODUCER CE: This Act currently requires non-exempt insurance producers to obtain continuing education each annual period of his or her license. As of July 1, 2003, such producers will annually need to complete one (1) hour of training in an ethics course that is related to the business of insurance and which has been approved by the Commissioner. While producers of sixty (60) years of age or having been actively licensed for fifteen (15) years as
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	of the effective date of the Act continue to be exempt from all CE requirements, producers licensed after the effective date will not be exempt and must meet the applicable CE requirements.
1400	<p data-bbox="228 279 1531 405">GROUND FOR DISAPPROVAL OF DOMESTIC MERGER OR SALE: Adds authority for Commissioner to review the credentials of those parties planning to purchase or merge a domestic insurer. Allows the Commissioner to review select objective qualifications of the owner, purchaser, officers or director of the acquiring party. Those include:</p> <ul data-bbox="277 407 1531 562" style="list-style-type: none"> - whether the proposed new owner or acquiring party's officer(s) or directors have any criminal convictions; - whether the proposed new owner or acquiring party's officers or directors were the subject of any misconduct order issued by any regulatory body or a court; and - whether the proposed new owner or acquiring party's officers or directors insurance license denied, suspended or revoked in Arkansas or any other jurisdiction.
1787	<p data-bbox="228 600 1531 693">TITLE AND AVIATION TITLE INSURANCE RESERVES: <u>Ark. Code Ann.</u> § 23-63-601. This legislation merely re-enacts the long-standing formula for title and aviation title insurance reserves which was inadvertently deleted in DOI legislation in 2001 and is applicable to only domestic title insurers.</p>
1790	<p data-bbox="228 730 1531 915">NOTICE OF RENEWAL OR NON-RENEWAL/RATE AND POLICY CHANGES: This Act will require certain information regarding the insurance company's intention to either renew or non renew a property and casualty insurance policy prior to its expiration. Currently, workers compensation, professional liability, homeowners and other miscellaneous lines of property and casualty lines have no requirements that the insured be given any notice of nonrenewal or rate and policy changes taking effect at renewal. This Act will also standardize the commercial notices for those lines with those already existing in law.</p>
1350	<p data-bbox="228 953 1531 1138">PREMIUM DEFICIENCIES: This Act amends Title 23, Chapter 64, Subsection 232, concerning premium delinquencies and producer reporting requirements. Subdivision (e) is amended to provide that failure of an insurance producer to comply with the reporting requirements of subdivision (b)(2) will constitute a Class A misdemeanor. Also, a new subdivision (f) is added which states that the provisions of the subsection shall <u>not</u> create an affirmative defense to, or limitation on, the prosecutions against insurance producers by the Arkansas Insurance Department.</p>
458	<p data-bbox="228 1176 1531 1234">SALES TAX ON TOTAL LOSS: This Act amends statute to clarify that sales taxes shall be paid in auto total loss settlements in first and third party claims.</p>
1345	<p data-bbox="228 1272 1531 1488">FIRE PROTECTION RATINGS: Traditionally insurers have used "public protection classes" developed by an insurance advisory organization as one of the components when developing a rate for specific areas. These protection classes have been developed using a variety of factors, including the capabilities of the fire department providing primary protection for the structures in the area in question. Use of these protection classes, and consequently the capabilities of responding fire departments is not mandatory under Arkansas's rating law. This Act amends <u>Arkansas Code</u> Ch 88's General Provisions to require insurers to take fire protection into consideration in rating.</p>